

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1023 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

AMRUTLAL GANDALAL SHAH

Versus

STATE OF GUJARAT

Appearance:

MR SR SHAH for Petitioner

Ms. Katha Gajjar, AGP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 07/12/1999

ORAL JUDGEMENT

The petitioner has filed this petition for appropriate writ, direction or order quashing and setting aside Annexures 'C', 'F' and 'H' and directing refund of excess amount allegedly recovered under so-called mistake of law, with interest.

2. It seems that the matter relates to Entertainment Tax under the Gujarat Entertainment Tax Act, 1977. (for short, 'the Act') There are two important provisions contained in Sections 6 and 29 of that Act. Under section 29 of that Act, the State Government has been empowered to exempt any entertainment or class of entertainment from payment of tax subject to such conditions as may be specified.

3. The petitioner has been running a Janata Cinema and according to the case of the petitioner, the petitioner is entitled to certain benefits available to the petitioner under Sections 6 and 29 of the Act. The petitioner claimed benefits under both the sections. However, there is a decision of the Division Bench of this High Court in Arman Cinema, v. State of Gujarat. 1998 (3) GLR 1836. There the Division Bench of this High Court has very clearly laid down that the owner of the Cinema cannot claim double exemption from payment of tax i.e. he cannot claim exemption under Section 6 of the Act if he has availed of concession under Section 29 of the Act. On the said fact, this Court dismissed the said petition of the petitioner and even the certificate sought under Article 134A of the Constitution was also refused. This means that the said decision has become final and the facts of the case before us stand squarely covered by the said decision. Therefore, in view of the said decision, this petition will not survive.

4. Learned Advocate for the petitioner has been heard on this aspect of the case and after hearing him, I find that the above decision will squarely cover the facts and circumstances of the case before me also. Therefore, this petition would not survive in view of the aforesaid decision. It is required to be dismissed and is, therefore, disposed of as dismissed. Rule discharged. Interim relief, if any, stands vacated. No order as to costs.

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msh.